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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 994

SEYMOUR POLLACK,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BERT B. RAND
HANS A. NATHAN
WARREN E. MAGEE
1730 K Street, N. W.
Washington, D. C. 20006
Counsel for Petitioner

Washington, D. C. · THIEL PRESS · 202 · 393-0625

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No.

SEYMOUR POLLACK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Decision and Judgment of the United States Court of Appeals for the Fifth Circuit entered on October 1, 1969.

THE OPINION BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is printed in Appendix A *infra*, at p. 1(a), and has not been reported.

JURISDICTION

The Court of Appeals filed its Opinion and Judgment on October 1, 1969 and denied petitioner's Petition for Rehearing on October 28, 1969. The Court of Appeals stayed its mandate until November 27, 1969. This Court on November 21, 1969 extended the time for filing this petition to and including December 27, 1969. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Amendments V and VI to the Constitution, the applicable provisions of 18 U.S.C., Secs. 371, 1341, 1343 and 2314, 15 U.S.C., Sec. 77(q)(a), Rules 34 and 47 of the Federal Rules of Appellate Procedure and Local Rule 18 of the United States Court of Appeals for the Fifth Circuit are printed in Appendix B to this Petition.

STATEMENT OF THE CASE

On June 6, 1967, Petitioner was indicted in the United States District Court for the Northern District of Alabama. The indictment covers twenty five pages of the record (R. 1-25)[1], contains eight Counts, charges a vast conspiracy operating in several States violating 18 U.S.C., Sec. 371; violations of 18 U.S.C., Sec. 1341 (mail fraud); 15 U.S.C., Sec. 77(q)(a) (sale of securities in interstate commerce); 18 U.S.C., Sec. 1343 (use of interstate wire communication facilities); and 18 U.S.C., Sec. 2314 (interstate transportation of securities).

The indictment named as defendants J. Ernie Gaskin and Samuel Palmer Keith, Jr. Also named as a conspirator was William L. Delong, but not indicted because deceased. Counts 2 through 8 charge substantive offenses on the theory that

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[1] "R" refers to the Transcript of Record filed with this Court.

each was part of the vast conspiracy described in Count 1, covering the period August 26, 1965 through March 8, 1966, having for its purpose fraudulently obtaining monies, securities and other assets of the United Security Life Insurance Company. All of the financial transactions involved and all of the transactions charged as substantive offenses in Counts 2 through 8 are charged in Count 1 to be overt acts to carry out the objects of the conspiracy (R. 11).

All defendants pleaded not guilty. Petitioner's trial was separate and he was tried later because of illness. In the earlier trial, Keith was found not guilty and Gaskin was found guilty on Counts 1 and 3 through 8. Gaskin was sentenced to three years, appealed from the judgment of conviction and the District Court granted bail on appeal. That appeal is pending.

The jury found Petitioner guilty on all eight Counts. Petitioner was sentenced to five years on each Count, to run concurrently. Petitioner timely filed a Notice of Appeal. The District Court granted bail on appeal.

On September 23, 1969, after Petitioner and Respondent had filed their briefs on appeal, the Court of Appeals transferred the appeal to the Summary Calendar for disposition under Rule 18 of that Court and in a summary proceeding disposed of the appeal without argument. Petitioner timely filed a Petition for Rehearing, which petition was likewise disposed of in summary fashion without argument by the court below by Order entered on October 28, 1969. The court below stayed the Mandate pending the filing of an application for Writ of Certiorari to and including November 27, 1969. This Court on motion of Petitioner entered an Order on November 21, 1969, extending the time for filing this Petition for a Writ of Certiorari to and including December 27, 1969.

QUESTIONS PRESENTED

1. Whether Petitioner is being deprived of his liberty without due process of law, contrary to the Fifth Amendment to the Constitution of the United States, because:

(a) the Court below adopted, unlawfully and in violation of the Constitution of the United States, the decisions and Federal Rules of Appellate Procedure of this Court, its Rule 18, providing for summary disposition of Petitioner's appeal without oral argument; and

(b) if Rule 18 were not to be held unconstitutional or illegal by this Court, the Court of Appeals' *sua sponte* transfer of Petitioner's appeal to the summary calendar and its summary disposition of the appeal without oral argument, were arbitrary and capricious and constitute a denial of due process of law to Petitioner.

2. Whether Petitioner was deprived of his constitutional rights to a fair trial and is being deprived of his liberty without due process of law, contrary to the Fifth and Sixth Amendments of the Constitution of the United States in a criminal case where the District Court committed such a great number of plain prejudicial errors (including, but not limited to the following) as to completely invalidate the trial proceedings, to wit:

(a) permitting Petitioner to go to trial on a 25-page indictment charging seven unrelated substantive offenses under distinct and unrelated statutes;

(b) permitting evidence of a conviction of an alleged co-conspirator in order to infer Petitioner's guilt under the indictment, although that earlier conviction had not been finally affirmed;

(c) admitting evidence of the suicide of another alleged co-conspirator, to infer an admission of guilt by that deceased co-conspirator, although the prosecution knew or should have known that the reasons for the suicide were personal involvement of an amorous nature;

(d) permitting the prosecution to withhold evidence which would have tended to exonerate Petitioner;

(e) permitting in evidence and the using of enlarged, inflammatory and hearsay exhibits prepared by a Government investigator, which exhibits were not based upon the evidence;

(f) denying Petitioner's motion for a mistrial, in the light of prejudicial newspaper publicity although it had been clearly shown that the jury had access to such publicity inside the jury room, and prior to the verdict; and

(g) denying Petitioner's motion for a directed verdict of Not Guilty at the conclusion of the prosecution's evidence.

REASONS FOR GRANTING THE WRIT

Several of the reasons governing review on Certiorari by this Court are present in this case. The Court below has rendered a summary decision without argument, in conflict with the decisions and the Federal Rules of Appellate Procedure of this Court, earlier decisions of the Court below, other Circuit Courts of Appeal and with authoritative decisions in the State Courts, and, in erroneously affirming the actions of the District Court, deprived petitioner of a fair and impartial trial and of the right not to be deprived of his liberty without due process of law, contrary to Amendments V and VI to the Constitution of the United States.

The Court of Appeals in adopting its Rule 18 and in barring oral argument and providing for a summary hearing, has raised an important question of Federal law which has not been, but should be, settled by this Court.

The decisions below have so far departed from the accepted and usual course of judicial proceedings and the Court of Appeals has sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision.

I.

RULE 18 PERMITTING SUMMARY PROCEEDINGS WITHOUT ORAL ARGUMENT IS UNCONSTITUTIONAL AND IS CONTRARY TO THE FEDERAL RULES OF APPELLATE PROCEDURE OF THIS COURT

Rule 18[2] of the Court below provides for a Summary Calendar and authorizes the Court, *sua sponte*, to consider cases without oral argument, all without an appellant's consent. On September 23, 1969 the Court below *sua sponte* placed Petitioner's appeal on the Summary Calendar, barred oral argument and decided the appeal in a summary proceeding. The right to be heard orally in open court is a part of due process of law. We contend oral argument could not be waived except by consent of the parties to an appeal. Summary proceedings, like those below, we submit, are a denial of due process of law guaranteed by the Fifth Amendment to the Constitution.

> *Washington v. Texas*, 388 U.S. 14, 87 S. Ct. 1920;
> *In Re Green*, 369 U.S. 689, 82 S. Ct. 747;
> *In Re Oliver*, 333 U.S. 257, 82 S. Ct. 499;
> *Cole v. Arkansas*, 333 U.S. 196, 68 S. Ct. 514;
> *Powell v. Alabama*, 287 U.S. 45, 53 S. Ct. 55.

In enacting Rule 18 and in deciding the appeal below without oral argument and in a summary manner, the Court below has raised and decided an important question of Federal law which has not been but should be settled by this Court. As this Court said in *Powell v. State of Alabama*, 287 U.S. 45, 68, 53 S. Ct. 55, 64, "A Court must hear before it condemns."

> "A person's right to reasonable notice of a charge against him and an opportunity to be heard in his defense—a right to his day in Court—are basic to our system of jurisprudence." *Washington v. State of Texas*, 388 U.S. 14, 18, 87 S. Ct. 1920, 1923.

Oral argument in Courts of Appeal is now controlled by the Federal Rules of Appellate Procedure of this Court.

[2] App. B, p. B4.

Rule 34 of those Rules provides for oral argument of appeals, fixes the time for argument and further provides that argument can be dispensed with and the case submitted on Briefs only "by agreement of the parties." (App. B, p. B3).

Rule 47 of the Appellate Rules permits local rules to be adopted but such rules must not be inconsistent with the rules of this Court. (App. B, p. B4).

Rule 18 of the Court below, we submit, is illegal in that it is inconsistent with Rules 34 and 47 F.R.A.P. and constitutes an arbitrary and capricious disposition of Petitioner's appeal without his consent and contrary to law. Rule 18 and the decision of the Court below, and earlier decisions of that Court under Rule 18, are in conflict with the decisions of this Court, the Federal Rules of Appellate Practice, and these actions of the Court below have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Where questions are presented on appeal not so patently frivolous as to require the dismissal of the appeal, they cannot be disposed of in a summary fashion and have to be briefed and argued.

Coppedge v. United States, 369 U.S. 438, 453; 82 S. Ct. 917, 925 (1962). In *Coppedge* this Court held (p. 453, 925):

> "Contrary to the Government's assertions here that petitioner has already received what amounts to plenary review of the conviction following his second trial, we hold petitioner has not yet received the benefits of presenting either oral argument or full briefs on the merits of his claims to the court first charged with the supervision of the trial court. *****We only hold that taken as a whole, petitioner's various claims cannot justify the summary disposition of his case ordered below."

In *Rodriguez v. United States*, 89 S. Ct. 1715 (June 2, 1969) this Court held that an appeal from a district court's

judgment of conviction in a criminal case is a matter of right, stating through Justice Marshall (p. 1717):

> "Those whose right to appeal has been frustrated should be treated exactly like any other appellant's, they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage of the proceedings".

II.

PETITIONER IS BEING DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW BECAUSE OF PLAIN PREJUDICIAL ERRORS COMMITTED IN THE DISTRICT COURT

Petitioner was required to go to trial on a twenty-five page indictment, charging a vast conspiracy over several states and seven substantive offenses under distinct and unrelated statutes, i.e., mail fraud, sale of securities in interstate commerce, illegal use of interstate wire facilities and interstate transportation of securities. Count 1 charges a vast conspiracy during the period August 26, 1965 through March 8, 1966 to defraud the United Security Life Insurance Company. The substantive offenses in Counts 2 through 8 are charged as being overt acts (R. 11).

Respondent's proof was bottomed on the charge in the indictment that 75,000 shares of stock of Fifth Avenue Industries and 75,000 shares of stock of General Holding Corporation transferred to United had "no value" (R. 4). In stock market transactions, the values of unlisted stocks are shown on what are termed brokers' "pink sheets", showing prices asked and demanded. In the cross-examination of prosecution witness Latsis, an employee of United, the existence of these "pink sheets" and the quotes on them was shown (R. 166-173). These "pink sheets" obviously were in the possession of the prosecution as the Securities and Exchange Commission conducted this investigation and has all such stock records. The deliberate or negligent failure of the prosecution to produce these "pink sheets" on the

issue of "no value" of these stocks is contrary to Canon of Professional Ethics 5, which requires the production of all evidence on an issue in order "that justice is done".[3] The failure to produce this vital evidence on value which would have established that these 150,000 shares of stock had values of from $3.00 to $3.75 or more per share, is contrary to *Napue v. People of the State of Illinois*, 360 U.S. 264, 79 S. Ct. 1173 (1959); *Giles v. State of Maryland*, 386 U.S. 69, 87 S. Ct. 793 (1967); *Clancy v. United States*, 365 U.S. 312, 81 S. Ct. 645 (1961); *United States v. Consolidated Laundries Corporation*, 291 F.2d 563, C.A. 2, (1961); and *United States v. Miller*, 411 F.2d 825, C.A. 2, (1969).

Without proof of the existence of the conspiracy charged, evidence concerning the transactions described in Counts 2 through 8 (all of which were handled in ordinary and businesslike manner) was admitted subject to being connected up with Petitioner pursuant to the conspiracy. The conspiracy charged was not established by competent evidence *aliunde*. The District Court permitted the "unrelated" proof concerning the substantive offenses (overt acts) to be received in evidence without being connected to Petitioner and the conspiracy and the court below considered that evidence sufficient to establish the conspiracy charge and the substantive offenses. Proof *aliunde* establishing conspiracy and connecting the defendant with it is necessary to a conviction. *Glasser v. United States*, 315 U.S. 60, 74; 62 S. Ct. 457, 467. In *Glasser*, this Court held evidence like acts of co-conspirators, is admissible "only if there is proof *aliunde*" of the conspiracy. No such proof exists in this case.

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[3]Canon 5 of the American Bar Association in applicable part reads:

> " * * * The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible."

The conspiracy charged in the indictment had to be formed prior to, and by August 26, 1965. The indictment lists overt acts designated A through O (R. 11-15). The first overt act done pursuant to the conspiracy A occurred on August 26, 1965 at Birmingham, Alabama (R. 11). The record is devoid of any evidence establishing that conspiracy by August 26, 1965. At that date the so-called conspirators, Gaskin and Pollack, had not met and did not even know Keith and DeLong. The District Court permitted all evidence concerning the overt acts, which comprises the substantive offenses in Counts 2 through 8, to be received in evidence subject to being connected up. This was never done. Overt acts and means are not available to prove the conspiracy itself. Moreover, the Government's exhibits, up to Exhibit 162, while identified and received in evidence and briefly described and quoted from in part in the testimony, were never circulated among the jury and were not sent into the jury room. Thus, the "damning" evidence before the jury other than the characterization and excerpts from the exhibits dealing with overt acts, was evidence that Gaskin had been convicted under the same indictment in a prior trial, and that DeLong, another co-conspirator, had committed suicide, together with United States' Exhibits 162, 163 and 164. These three exhibits were blown-up; hearsay cash-flow charts prepared by a Government investigator, and measured up to three and one-half to five and one-half feet, which were exhibited before the jury and which the jury read and observed throughout the closing arguments. These summary charts were not based upon the evidence and in fact were produced to establish that $20,000 of the monies involved in the indictment was paid to Petitioner, when there was no such evidence in the case. The courts below held these inflammatory summaries to be admissible if based upon information obtained by the investigator, not necessarily based on evidence in the record. These rulings are contrary to *United States v. Johnson*, 319 U.S. 579, 63 S. Ct. 1233; *United States v. Goldberg*, 401 F.2d 644, C.A. 2, (1968); and *United States v. Ward*, 169 F.2d

460 C.A. 3, (1948) and *McDaniel v. United States*, 343 F.2d 785, 789 C.A. 5, (1965).

Petitioner, at the conclusion of the Government's evidence, moved for a directed verdict of acquittal on the ground that the prosecution had failed to establish the conspiracy charge and that the seven substantive offenses were illegal because done as overt acts pursuant to that conspiracy. The rulings below concerning Petitioner's motion for a directed verdict are contrary to *Glasser* and to *Windsor v. United States*, 384 F.2d 525, C.A. 9, (1967); *Causey v. United States*, 352 F.2d 203, C.A. 5, (1965); *Bernard v. United States*, 342 F.2d 309, C.A. 9, (1965) and *United States v. Watson*, 293 F.Supp. 694, D.C.W.D. Mo., (1968).

The courts below permitted evidence against Petitioner of the conviction of the alleged co-conspirator, Gaskin, in an earlier trial, although that earlier conviction was pending on appeal, contrary to *Krulewitch v. United States*, 336 U.S. 40; *Michaelson v. United States*, 335 U.S. 469; *Hamilton v. United States*, 409 F.2d 928, C.A. 5, (1969); *West v. Henderson*, 409 F.2d 95, C.A. 6, (1969); *Fenwick v. United States*, 252 F.2d 124, C.A. D.C., (1958); and *Drew v. United States*, 331 F.2d 85, C.A. D.C., (1964).

The courts below permitted evidence that an alleged conspirator, DeLong, committed suicide, to infer Petitioner's guilt. No evidence in this record links the suicide with the facts charged in the indictment. The prosecution knew, or should have known that this suicide was caused by facts other than those here involved. Coupled with the admission of the conviction of Gaskin, this irrelevant evidence of suicide deprived Petitioner of a fair trial. Moreover, in two articles published in the Birmingham News, defendant's Exhibit 1, on April 15, 1969 and in the Birmingham Post-Herald, published on April 16, 1969, prejudicial material appeared describing the prior trial, the suicide of DeLong and the prior conviction of Gaskin. Defendant's Exhibit 2 ended up in the jury room with the jury prior to the return of its verdict. Defendant's Exhibits 1 and 2 are printed in Appendix C to this petition. The prejudice from the April

16, 1969 article, obviously read by the jury, is plain. The refusal of the courts below to grant a mistrial because of this prejudicial newspaper article, obviously read by the jury because it was found in the jury room prior to the verdict, is contrary to *Marshall v. United States*, 360 U.S. 310, 79 S. Ct. 1171 (1959); *United States v. Smith*, 403 F.2d 74, C.A. 6, (1968); *Silverthorn v. United States*, 400 F.2d 627, C.A. 9, (1968), and *Dallago v. United States*, Case No. 22174, U.S. App. D.C. (Nov. 7, 1969). _____ F.2d _____.

CONCLUSION

The important questions involved showing Petitioner was deprived of a hearing on this involved appeal, contrary to due process and to the Federal Rules of Appellate Procedure of this Court, and the other important questions showing that Petitioner has been deprived of a fair trial and is being deprived of his liberty without due process, should be reviewed and decided by this Court to further the proper administration of justice in criminal cases. For the reasons and grounds stated in this Petition, the erroneous decision below should be reversed and it is prayed that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

Bert B. Rand
Hans A. Nathan
Warren E. Magee
1730 K Street, N.W.
Washington, D.C. 20006
Counsel for Petitioner

Dated December 16, 1969

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 27762

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SEYMOUR (SY) POLLACK,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Alabama

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(October 1, 1969)

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

PER CURIAM: Appellant was convicted of eight counts of mail fraud, fraud in the sale of securities, and related offenses.

Pursuant to new Rule 18 of the Rules of this court, we have concluded on the merits that this case is of such character as not to justify oral argument and

have directed the clerk to place the case on the Summary Calendar and to notify the parties in writing. See *Murphy v. Houma Well Service,* 5 Cir. 1969, 409 F.2d 804.

Appellant attacks the admission into evidence of corporate minute books relating to periods several years before the acts with which he is charged. His objections are not to their contents, except by implication that they were either irrelevant or cumulative. He asserts that these additional exhibits, added to a record already complex and voluminous, made the evidence too difficult for the jury to grasp. If error at all, no prejudice to appellant is shown.

There was no error in denying the motion for mistrial based on accounts of the trial carried in local newspapers. The trial judge considered the articles and determined that they were no more than accurate and contemporaneous reports of the trial proceedings, but nevertheless interrogated the jury when both sides had rested and ascertained that no juror had seen the articles. This case is not even remotely similar to *Sheppard v. Maxwell,* 384 U.S. 333, 16 L.Ed.2d 600 (1966) or *Estes v. Texas,* 381 U.S. 532, 14 L.Ed. 2d 543 (1965).

The evidence concerning expenditures by appellant at a hotel in Miami was relevant to show disposition of funds allegedly received in the fraudulent undertakings, and the fact that some of the evidence may have been repetitious does not cause it to be prejudicial.

Summaries prepared by an accountant of various complex transactions were admissible. The accountant was qualified as an expert and testified that the summaries were based on matter in evidence. ***McDaniel v. United States*, 343 F.2d 785 (5th Cir. 1965).**

AFFIRMED.

APPENDIX B

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Amendment V to the United States Constitution in its applicable part provides:

> "No person shall * * * be deprived of his life, liberty, or property, without due process of law; * * *."

Amendment VI to the United States Constitution provides:

> "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

18 U.S.C., Sec. 371 in its applicable part provides:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five year, or both. * * *"

18 U.S.C., Sec. 1341 provides:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security,

or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 763; May 24, 1949, c. 139, Sec. 34, 63 Stat. 94."

15 U.S.C., Sec. 77(q)(a) provides:

It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly -

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any unture statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

18 U.S.C., Sec. 1343 provides:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign

commerce, any writing, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both. Added July 16, 1952, c. 879, Sec. 18(a), 66 Stat. 722, and amended July 11, 1956, c. 561, 70 Stat. 523."

18 U.S.C., Sec. 2314, in its applicable part, provides:

"Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; * * *"

Rule 34, Federal Rules of Appellate Procedure, in its applicable part provides as follows:

"Oral Argument. (a) Notice of Argument; Postponement. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time Allowed for Argument. Unless otherwise provided by rules for all cases or for classes of cases, each side will be allowed 30 minutes for argument. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary. Requests may be made by letter addressed to the clerk reasonably in advance of the date fixed for the argument and shall be liberally granted if cause therefor is shown. A party is not obligated to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and Content of Argument. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

* * * * * *

(f) Submission on Briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued."

Rule 47, Federal Rules of Appellate Procedure, in its applicable part provides as follows:

"Rules by Court of Appeals.

Each court of appeals by action of a majority of the circuit judges in regular active service may from time to time make and amend rules governing its practice not inconsistent with these rules. In all cases not provided for by rule, the courts of appeals may regulate their practice in any manner not inconsistent with these rules. * * *."

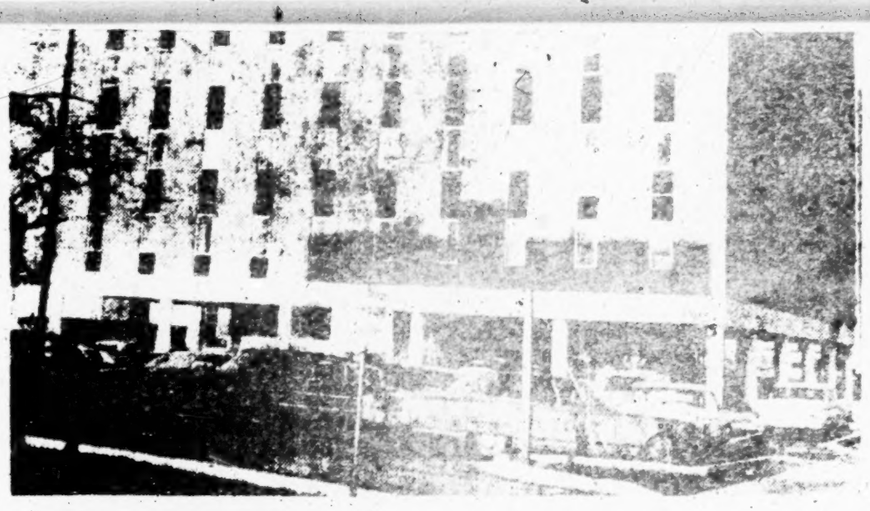
Rule 18, Court Rules, United States Court of Appeals For The Fifth Circuit, reads as follows:

"Summary Calendar

(a) Whenever the court, sua sponte or on suggestion of a party, concludes that a case is of such character as not to justify oral argument, the case may be placed on the summary calendar.

(b) A separate summary calendar will be maintained for those cases to be considered without oral argument. Cases will be placed on the summary calendar by the clerk, pursuant to directions from the court.

(c) Notice in writing shall be given to the parties or their counsel of the transfer of the case to the summary calendar."



Building to be dedicated

Dedication ceremonies will be held at 10 a.m. Monday for the recently completed Center for Development and Learning Disorders, a new training ground at Birmingham for persons learning to work with the mentally retarded and other victims of learning disabilities. Located in the University of Alabama Medical Center at the corner of 19th Street and Seventh Avenue South, the building cost $2.8 million. The building was gradually occupied by faculty and staff during January and February, and now is in operation. Dedication activities will consist of formal 10 a.m. ceremonies at the University Engineering Building and afternoon professional seminar, and public tours of the building from 1 p.m. until 5 p.m.

Businessman being tried on charge of conspiracy

Seymour Pollack, a New Jersey businessman, is on trial in federal court in Birmingham today on charges of conspiring to defraud a local insurance company of $639,000.

Pollack was charged in a 1967 indictment by a federal grand jury of conspiring with Palmer Keith Jr., a Birmingham attorney, and J. Ernie Gaskin, a Little Rock, Ark., businessman, to defraud United Security Life Insurance Co.

GASKIN AND Keith were tried in May 1968. Gaskin was convicted on seven of eight counts, Keith was found innocent.

Pollack's trial was delayed because he was too sick to leave his hospital bed last year.

Testimony in the earlier trial identified Keith as general counsel and assistant secretary for United Security and Gaskin as president of a Little Rock insurance company that became insolvent.

POLLACK OFFERED to get a loan for Gaskin to pay his company's creditors, according to Gaskin's testimony.

Later the two sold stock, described as "worthless," to United Security Life for $300,000, according to the indictment and testimony in the earlier case.

Keith said he followed orders of the company's president, the late William DeLong, in his work for the insurance firm.

DeLong died before the trial. Company officials and authorities said he committed suicide.

Eight men and four women are hearing the case against Pollack. U. S. Dist. Judge C. W. Allgood is presiding.

Husband's pain brings robbery

ROCHESTER, N. Y. (AP) — A young woman in her 20s robbed a druggist at knifepoint Monday, taking only narcotics she said was needed to ease the pain of her husband who was dying of cancer.

Police said she fled up

facilities, to be locat Birmingham.

The cancer hospital let Alabamians "avail selves to the latest dru treatment techniques," McKnight, an agent for ty National Life Insuran

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Although the birth among Australia's abo is twice the national av the black minority's mortality rate is six tim national rate. From 12 per cent of aboriginal die before age 2, part cause they lack ade medical care.

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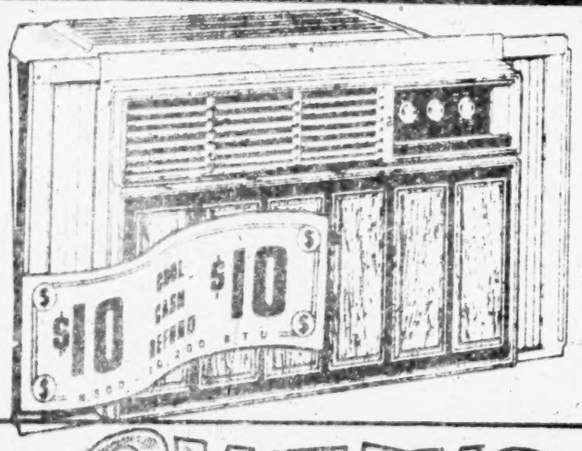

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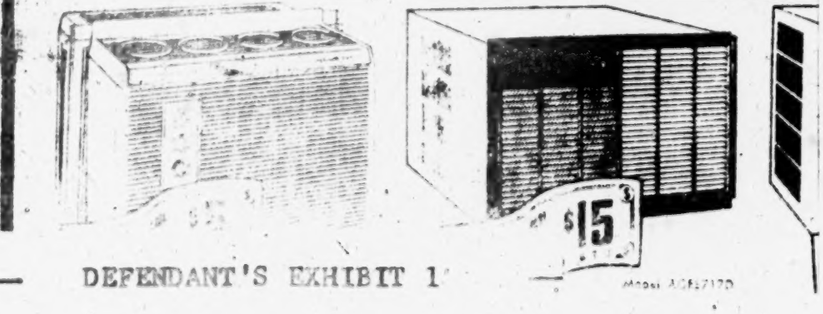

DEFENDANT'S EXHIBIT 1

In its fight against crime, added, there are many problems with which criminal justice cannot deal, such as the decline in parental authority and control over children and youth.

But the main problem facing police departments is personnel, Parsons said.

He also blasted the career system in use in most police

Reluctance To Change

"Many of our problems stem from our reluctance to change," Parsons said.

"Society is based on a system of rewards and punishment and everything has a cause and effect," Parsons said. This being so, he added, people should study claims of brutality by police.

—This curve, as it passes the intersection of Airport one of the most perplexing problems facing city of s to be a re-design of the curve—making it for less

Cause Of Deaths

at $90,000, most of which would go for the purchase of right-of-way.

Traffic Engineer Ben Robinson said "stretching out the curve," as the Engineering Department plans, is a possible means of cutting down on the number of accidents.

Presently, he said, there is only a 290-foot radius to the curve, although the recognized standard is 880 feet.

He said changing the design of the curve could help cut down on the number of vehicles that run off the street.

Pulling out a hefty file on the stretch of highway, Robinson said the case history goes back at least to 1964.

Robinson's men found a 15-foot strip of pavement which was unlike the remainder of the pavement. He said that when a sanitary sewer line was installed, asphalt that was not as skid resistant as the old pavement was used to replace the old asphalt.

This strip was then replaced with "first class" pavement, he said, and the accidents were reduced, although not by an appreciable amount.

So, in 1965, caution lights were installed warning motorists to slow down. A sign, telling drivers that the speed limit around the curve is 25 miles per hour when the street is wet, was installed in 1964, he said.

In another move to cut accidents, reflectorized signs were placed along the roadway to make it more visible at night, Robinson said.

Still the accidents are occurring.

St. Vincent's To See Fashion Show

Mrs. Inez Jackson will present a fashion show for the St. Vincent's Community and Family center parent's club at 4:30 p.m. Sunday at the center.

Mrs. Jackson is sewing instructor for the adult classes at the center.

There will also be an important business meeting, Mrs. Alberta Cleveland, president, and Mrs. Philomena Davis, center director, said.

Attorney Testifies

Gaskin, Pollack Didn't Own Stock

BY JANEAN MANN

Ernie Gaskin and Seymour "(Sy) Pollack did not legally own the stock they sold to United Security Life Insurance Co. for $300,000, a Little Rock attorney testified Tuesday during the second day of Pollacks federal fraud trial.

Claude Carpenter Jr., who was Gaskin's attorney in 1965, said he witnessed an agreement whereby Gaskin and Pollack, listed as owners of stock in Fifth Avenue Industries and General Holding Corp., sold the stock to the Birmingham company.

Earlier in the day, Gaskin, convicted last year on the same charges for which the New Jersey businessman is now being tried, told the jury he had obtained the stock from Nicholas Papadakos as collateral for a $5100 loan to Papadakos.

Title To Stock

The title to the stock, however, remained in Papadakos' name, Gaskin said.

According to a second agreement between Gaskin, Pollack and United Security, the two men would buy back the stock for $318,000 within a year. The agreement was signed by S. Palmer Keith Jr. and William DeLong for United, he said.

In testimony during the opening day of the trial, however, United Security secretary and former comptroller Joe Latsis said that Gaskin and Pollack had failed to purchase the stock although requested to do so.

United has been unable to find a market for that stock or for 100,000 shares in Gaskin's Southern American Life Insurance Co. which it bought for $100,000, Latsis said.

When questioned by U. S. Atty. R. Macey Taylor about the financial condition of Southern American at that time, Carpenter said it had only about $200 in cash. Gaskin also owed money to a number of persons in connection with a court recission order under which Gaskin was ordered to reimburse certain persons for stock he sold.

Much of the money which Gaskin received for the Fifth Avenue and General Holding Corp. stock — $200,000 — went into a special trust account in the name of two of Gaskin's other companies, Carpenter said.

Gaskin, Pollack and Birmingham attorney Keith were indicted by a federal grand jury on charges of conspiring to defraud United Security of more than $600,000.

Former United Security president William DeLong, who killed himself in 1966, was named as a co-conspirator in the indictment which also charged the group with forcing Southern American into receivership.

Keith was acquitted and Gaskin convicted during a trial in Birmingham last year, but Pollack's trial was rescheduled because of his illness at that time. Gaskin is currently appealing his conviction.

Flooding Continues In Midwest

By United Press International

Thousands of persons streamed out of Minot, N. D., and other flood-harried communities in the upper Midwest Tuesday as snow-gorged rivers struggled to burst their bonds.

Authorities said 9,500 of Minot's 34,000 residents would be out of their homes and safe on higher ground by Tuesday night ahead of a new crest expected to surge down the normally placid Mouse River.

The swollen Mississippi River neared an expected crest at St. Paul, Minn., and residents of the Minnesota capital city — where hundreds of suburban residents already were refugees — braced for three days of battle with old man river.

Downriver from St. Paul lowland residents stepped up evacuations in Wisconsin riverside cities. Police took over milk delivery in one section of Prairie Du Chien, Wis., and the mayor of La Crosse, Wis., asked for a National Guard patrol of dikes.

The orderly move out of the thousands at Minot boosted to more than 20,000 the number of persons who have been routed from their homes in the spring floods.

North Dakota counted 12,000 persons left temporarily homeless by high waters. More than 4,000 had been ousted from homes in South Dakota, more than 3,000 in Minnesota, some 700 in Iowa and 600 in Wisconsin.

In Senate

DEFENDANT'S EXHIBIT 2